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Attorneys for Haines Associates, an Idaho Limited Partnership

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA

HAINES ASSOCIATES, an Idaho limited
partnership,

Plaintiff,

vs.

DUSTY TRAILS ASSOCIATES OF
HAINES, LLC, an Alaska limited liability
company,

Defendant.

Case No. 3:20-cv-_____

**COMPLAINT FOR
BREACH OF CONTRACT**

Plaintiff, Haines Associates, an Idaho Limited Partnership (“Plaintiff”), by and through its attorneys, Guess & Rudd P.C., and for its Complaint against Defendant, Dusty Trails Associates of Haines, LLC, an Alaska limited liability company (“Defendant”), alleges as follows:

JURISDICTION

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(a)(1), in that this is an action between citizens of different States and the amount in controversy exceeds \$75,000, exclusive of interest, attorney fees and costs.

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PARTIES

2. Plaintiff is an Idaho limited partnership with its principal place of business in Boise, Idaho.
3. Defendant is an Alaska limited liability company (“Defendant”) and, upon information and belief, has its principal place of business in Haines, Colorado.

VENUE

4. Venue is proper in this district under 28 U.S.C. § 1391(b)(2) in that a substantial part of the events or omissions giving rise to the claims occurred in this district, and/or under 28 U.S.C. § 1391(b)(3) in that Defendant is subject to personal jurisdiction in this district with respect to this action, and there is no other district in which the action may otherwise be brought.

FACTUAL ALLEGATIONS

5. On or about December 26, 2019, Defendant executed a Promissory Note (the “Note”) in favor of Plaintiff in the sum of \$401,904.71, with interest accruing at a rate of 0.0% per annum, and with a Maturity Date of February 28, 2020 (“the Maturity Date”). Attached hereto as Exhibit A, and incorporated by reference herein, is a true and correct copy of the Note.

6. Pursuant to the terms of the Note, Defendant agreed that the outstanding principal balance, together with all accrued and unpaid interest thereon, and all other amounts owed by Defendant under the Note, shall be due and payable on the Maturity Date.

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7. Pursuant to the terms of the Note, Defendant agreed, subject to the requirements of the United States of America, acting through the United States Department of Agriculture, Rural Housing Service, that prior to the Maturity Date Defendant would make payments on the Note from Low Income Housing Tax Credit Equity, Construction Financing, or other USDA Rural Development approved sources.

8. To date, no payments on the Note from Low Income Housing Tax Credit Equity, Construction Financing, or other USDA Rural Development approved sources has been made.

9. The Note memorializes Defendant's agreement that, upon any Event of Default the entire principal debt, or so much thereof as may remain unpaid at the time, and all interest, fees and charges accrued thereon, shall, at the option of Plaintiff, become due and payable immediately, and that payment of said principal debt, or the unpaid principal balance thereof, and all interest, fees and charges accrued thereon, together with all other sums due under the terms of the Note, may be enforced and recovered at once.

10. The Note memorializes Defendant's agreement that any failure by Defendant to pay any installment of interest, principal, or principal and interest or any other sums payable pursuant to the Note which is not paid within ten (10) days of the date that payment is due constitutes an Event of Default.

11. Pursuant to the Note, following an Event of Default, the entire unpaid balance of said principal sum shall bear interest, in place of the 0.0% interest rate, and so long as

such Event of Default continues, at the rate of five percent (5%) per annum until paid in full (the “Default Rate”).

12. In a letter dated February 28, 2020, Plaintiff provided Notice to the Limited Member of Defendant (the “Limited Member”) that the Note’s Maturity Date had passed and that the principal amount of the Note, in the amount of \$401,904.71, had not been paid (the “Notice of Default to the Limited Member”). Attached hereto as Exhibit B is a true and correct copy of the Notice of Default to the Limited Member.

13. In a letter dated February 28, 2020, Plaintiff provided Notice to the Defendant that the Note’s Maturity Date had passed and that the principal amount of the Note, in the amount of \$401,904.71, had not been paid (“Notice of Default to the Defendant”). Attached hereto as Exhibit C is a true and correct copy of the Notice of Default to the Defendant.

14. Pursuant to Section 4 of the Note, and in full compliance with the terms of the same, Plaintiff provided the Notice of Default to the Limited Member and the Notice of Default to the Defendant, each demanding that if payment of the entire amount is not received on or before the 9th day of March, 2020 the Note would be in Default.

15. Pursuant to the terms of the Note, the Limited Member had an option to cure the default, but failed to do so.

16. To date, neither the Defendant nor the Limited Member has cured Defendant’s default on the Note.

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CLAIM FOR RELIEF – BREACH OF CONTRACT

17. Plaintiff incorporates each of the allegations set forth in the preceding paragraphs as though fully set forth herein.

18. Defendant has breached its agreement to make the agreed-upon payments under the Note.

19. Defendant has failed and refused to pay the amount due under the Note despite repeated demands by Plaintiff.

20. Plaintiff has performed all conditions precedent under the Note.

21. After all lawful offsets and credits have been allowed, the unpaid balance due to Plaintiff under the Note, as of May 9, 2020, is the principal sum of \$401,904.71, which amount has been and continues to accrue interest at the rate of five percent (5%) per annum until paid in full.

AWARD OF FULL ATTORNEY'S FEES AND OTHER COLLECTION COSTS

22. Plaintiff incorporates each of the allegations set forth in the preceding paragraphs as though fully set forth herein.

23. As a direct result of the Defendant's default under the terms of the Note, Plaintiff has been required to retain the services of legal counsel to collect the sums due under the Note. Pursuant to the terms of the Note, Plaintiff is entitled to recover from Defendant all of Plaintiff's costs and reasonable attorney's fees incurred in prosecuting this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays that judgment be entered in its favor and against the Defendant, as follows:

1. That Plaintiff have judgment against Defendant in the amount of \$401,904.71, plus interest at the Default Rate of five percent (5%) per annum from March 9, 2020, until judgment is entered.
2. For Plaintiff's full collection costs and expenses, including but not limited to the reasonable actual attorneys' fees Plaintiff incurs prosecuting this action;
3. For post-judgment interest to accrue at the legal rate on the entire amount of the judgment from the date judgment is entered herein;
4. For Plaintiff's post-judgment costs of collection, including but not limited to full collection costs and reasonable actual attorney's fees; and
5. For such other and further relief as the Court deems just, equitable, and proper.

DATED at Anchorage, Alaska, this 10th day of June, 2020.

GUESS & RUDD P.C.
Attorneys for Plaintiff

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